

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Docket No.: 07 CIV 8604

-----x  
AMERICAN INSURANCE COMPANY  
a/s/o Mariah Carey, 777 San Marin Drive  
Novato, California 94998,

Plaintiff,

-against-

**AFFIDAVIT**

CORN ASSOCIATES LLC  
86 Chambers Street, Suite 704  
New York, New York 10007

and

THE FRANKLIN TOWER CONDOMINIUM  
380 Lexington Avenue  
New York, NY 10168

and

KATZ METAL FABRICATORS INC.  
434 E. 165<sup>th</sup> St.  
Bronx, New York 10456

and

SAMCO PLUMBING, INC.,  
36-20 13<sup>th</sup> Street  
Long Island City, New York 11106

Defendants.

-----x  
State of New York    )  
                          ) ss:  
County of Bronx     )

**ISAAC KUBERSKY**, being duly sworn, deposes and says:

1. I am the President of Katz Metal Fabricators, Inc., a New York corporation, which maintains offices at 434 East 165<sup>th</sup> Street, Bronx, New York. The following statements are based upon my personal knowledge, as well as upon documents maintained in the regular course of business of Katz Metal Fabricators, and are made under the penalties of perjury.

2. On April 26, 1999, 271 Church Street Construction Corp. and Katz Metal Fabricators, Inc. entered into a Standard Form of Agreement Between Contractor and Subcontractor [AIA document A401-1997] for plumbing work to be performed on a renovation of a 17 story building at 90 Franklin Street, a/k/a 271 Church Street in Manhattan. This project is also known as "The Franklin Tower". The project involved the change from an office building to residential condominiums. Mr. Art Mazzucca, the Project Manager for 271 Church Street Construction Corp. and I signed the agreement on behalf of our respective companies. A copy of the contract is annexed hereto as Exhibit "A".

3. Katz Metal Fabricators, which is a heating, ventilation and air conditioning company (HVAC), retained Samco Waterworks, Inc., a licensed plumbing company, to complete the scope of work set forth in the plans and specifications of the plumbing contract (Exhibit "1"). Samco Waterworks, under the supervision of its own foreman, John Simida, performed plumbing work pursuant to the contract during the ensuing months including the installation of piping for the air conditioning tower on the roof; hot water heaters; condensate, vacuum and pressure pumps; and an assortment of

fixtures in the individual condominium units including tubs, ice makers, sinks, water closet tanks and their appurtenances.

4. On August 28, 2000, I received a letter from Mr. Michael Wynn of 271 Church Street Construction Corp. who advised me that, due to his belief that the work by Samco Waterworks was unsatisfactory, he was stopping all payment relating to the plumbing contract and that Danica Plumbing & Heating Corp. would be substituted, immediately, in place of Samco Waterworks. Mr. Wynn further indicated that he would charge the account of Katz Metal Fabricators for any remedial work performed by Danica Plumbing Heating Corporation upon its substitution of Samco Waterworks and that, finally, he would hold Katz Metal Fabricators responsible for any damages resulting from Samco Waterworks' performance. A copy of the August 28, 2000 letter is annexed hereto as Exhibit "2".

5. I received a second letter from 271 Church Street Construction Corp. dated September 19, 2000 which, in essence, was a confirmation of the August 28, 2000 letter (Exhibit "2") wherein Mr. Wynn advised me that he was retaining Danica Plumbing & Heating Corporation to correct both HVAC and plumbing work performed by Katz Metal Fabricators and Samco Waterworks. A copy of the September 19, 2000 letter is annexed hereto as (Exhibit "3").

6. Neither Katz Metal Fabricators nor Samco Waterworks performed any inspection, repair, maintenance or service of any kind on the HVAC or plumbing equipment at the Franklin Tower at any time after August 28, 2000 when the first of the two Wynn

letters was received. I have no knowledge of the contractors and subcontractors who may have eventually performed the work nor do I know the particulars of the work that they may have performed.

Dated: Bronx, New York  
May 13, 2008

  
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ISAAC KUBERSKY, President  
KATZ METAL FABRICATORS, INC.

Sworn to before me this  
19<sup>th</sup> day of May, 2008

  
\_\_\_\_\_  
Notary Public

CHACKO KOCH  
Notary Public, State of New York  
No. 01CH5072624  
Qualified in Queens County  
Commission Expires Feb. 3, 2011